

IT 95-17  
Tax Type: INCOME TAX  
Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE HEARINGS DIVISION  
CHICAGO, ILLINOIS

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DEPARTMENT OF REVENUE      )  
STATE OF ILLINOIS         )  
                           )  
      v.                   )   Docket:  
                           )  
XXXXXX                    )  
                           )   Hollis D. Worm  
                           )   Administrative Law Judge  
Taxpayers(s)              )  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as the result of a timely Protest by XXXXX (hereinafter referred to as the "taxpayer") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to him on August 20, 1992. The basis of this Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayer failed to advise the Department of a final federal change for tax years ending December 31, 1983, December 31, 1985 and December 31, 1986. The Notice asserted an increased tax liability, as well as penalties pursuant to 35 ILCS 5/1005 for failure to pay the entire tax liability by the due date.

In his Protest, the taxpayer contends that on the original income tax returns he was given a foreign tax credit, but in the Department's recomputation of tax due for the subject tax years, the Department did not include the foreign tax credit. The taxpayer also protests the imposition of the Section 1005 penalty contending that the increase to the taxpayer's adjusted gross income was the result of Internal Revenue Service examinations of various partnerships owned by the taxpayer and at the time

the original tax returns were filed, all taxes were paid.

The taxpayer did not request a formal hearing in this matter. Therefore, the following issues are being heard on the information provided by the taxpayer in his Protest and on the Notice of Deficiency: 1) whether the taxpayer should be allowed a foreign tax credit for the years in issue; and, 2) whether the taxpayer's failure to timely pay his tax liability was due, in whole or in part, to reasonable cause?

Following a review of the documentation, it is recommended that this matter be resolved in favor of the Department of Revenue.

#### FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, is established by the Notice of Deficiency, which indicates that final changes were made to the taxpayer's federal adjusted gross income which correspondingly increased his Illinois base income and resulted in increased Illinois income tax liability for the tax years ending December 31, 1983, December 31, 1985 and December 31, 1986.

2. The taxpayer did not report the final federal change to the Department pursuant to 35 ILCS 5/506 (a) and (b).

3. The taxpayer filed a timely Protest to the Notice, and did not request a formal hearing.

4. The taxpayer was not allowed a foreign tax credit on his original tax returns filed with the State of Illinois for the subject tax years.

5. The taxpayer failed to demonstrate that he should be allowed a foreign tax credit for the subject tax years and that reasonable cause existed for failure to pay the entire tax liability by the due date.

CONCLUSIONS OF LAW: Any person required to file an Illinois income tax return is required to notify the Department, within the time frame set by statute, of any final federal change which affects the computation of such person's base income. 35 ILCS 5/506(a)(b). Here, there was such a final

federal change which the taxpayer failed to report to the Department. Accordingly, the taxpayer is subject to additional tax for the subject tax years.

The taxpayer was not allowed a foreign tax credit on his tax returns originally filed with the State of Illinois. Therefore, his contention that he should be allowed a foreign tax credit in the computation of the additional tax due is without merit.

In addition to asserting a tax deficiency, the Notice proposes penalties pursuant to 35 ILCS 5/1005 for failure to pay the entire tax liability by the due date. Penalties imposed under the provision of this statutory section, however, shall not apply if failure to pay the tax at the required time was due to reasonable cause. 35 ILCS 735/3-8.

The existence of reasonable cause justifying abatement of a penalty is a factual determination that can only be decided on a case by case basis (*Rorabaugh v. United States*, 611 F.2d 211 (7th Cir.,1979)) and has generally been interpreted to mean the exercise of ordinary business care and prudence (*Dumont Ventilation Company v. Department of Revenue*, 99 Ill. App. 3d 263 (3rd Dist. 1981)). The burden of proof is upon a taxpayer to show by a preponderance of evidence that it acted in good faith and exercised ordinary business care and prudence in providing for the timely payment of its tax liability.

The taxpayer presented no evidence to support a finding that he made a good faith effort to determine his proper income tax liability. In fact, in his Protest the taxpayer admits that he was the owner of the partnerships which the Internal Revenue Service determined increased his adjusted gross income in the subject tax years. Consequently, the taxpayer has not met his burden of proof to show by a preponderance of evidence that he acted in good faith and exercised ordinary business care and prudence to pay his entire tax liability to the State of Illinois by the due date.

It is my recommendation that this matter be decided in favor of the Department of Revenue and the Notice of Deficiency be upheld in its entirety.

Hollis D. Worm  
Administrative Law Judge

April 5, 1995